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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X
FRONTIER AIRLINES, INC.,
Plaintiff,
- against -
AMCK AVIATION HOLDINGS IRELAND
LIMITED, ACCIPITER INVESTMENT 4
LIMITED, VERMILLION AVIATION (TWO)
LIMITED, WELLS FARGO TRUST COMPANY,
N.A., solely in its capacity as OWNER
TRUSTEE, and UMB BANK, N.A., solely in
its capacity as OWNER TRUSTEE,
Defendants.
CASE NO.: 1:20-cv-09713-LLS
-----X

* * * C O N F I D E N T I A L * * *

ZOOM VIDEOCONFERENCE

March 30, 2022
9:04 a.m. MDT

DEPOSITION of SPENCER THWAYTES,
before Melissa Gilmore, a Stenographic Reporter
and Notary Public of the State of New York.

Job No. NY5155592

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A P P E A R A N C E S:

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2 Lease Agreements, correct?

3 A. Frontier is the lessee.

4 Q. And the lessor is an owner trust
5 entity that's either UMB or Wells Fargo, right?

6 A. Yes, there's been -- that's correct.
7 There's an owner trustee involved.

8 Q. Going forward today, I'm going to
9 refer to those 14 Lease Agreements -- or 12 or
10 14, whatever it is, as the 14 Lease Agreements
11 or the 14 original leases.

12 Will you understand what I'm
13 referring to?

14 A. Yes.

15 Q. Frontier was required to pay rent in
16 connection with each of those Lease Agreements,
17 correct?

18 A. Yes.

19 Q. The rent was due monthly?

20 A. Yes.

21 Q. And for each Lease Agreement, would
22 the monthly rent amount be due on the same
23 calendar day each month?

24 A. I'm not certain, in these leases, if
25 it's the same calendar day each month or

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2 exactly how it was determined which day it was
3 each month.

4 I assume that it was the same
5 calendar day each month, but I'm not certain.

6 Q. Did you understand whether there was
7 any grace period associated with rent payments
8 made after a due date?

9 A. Yes.

10 Q. And what was your understanding of
11 any applicable grace periods under the Lease
12 Agreements?

13 A. Under the Lease Agreements, the
14 grace period, after the due date, I believe is
15 three days.

16 Q. Sorry. You cut out a bit.
17 Three days you said?

18 A. Three days. And I would like to
19 add, three business days.

20 Q. Do you know when a payment would be
21 due if a due date fell on a weekend?

22 A. You would start -- I believe you
23 would start counting from the first business
24 day -- well, I'm not sure in this lease,
25 frankly, if the -- if the way that it would be

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2 calculated would be starting from the next --
3 from the Monday after the weekend or if the
4 payment would fall on the Friday before the
5 weekend. I'm not sure in this case -- or in
6 these leases.

7 Q. As part of your job of overseeing
8 the treasury department, I believe you said you
9 were responsible for overseeing the making of
10 payments on leases, right?

11 A. I have a team of analysts that put
12 together all of the payments that are due every
13 month for all of the aircraft leases, and every
14 month they bring those payments through an
15 approval process that I'm involved in reviewing
16 and approving, and then a separate -- my
17 treasury team then processes those payments.

18 So my responsibility is making those
19 payments in a timely manner, but I have
20 infrastructure in place to make sure that the
21 payments are done when they are required to be
22 paid.

23 Q. You mentioned your team.

24 Who on your team had responsibility
25 for leases relating to the AMCK leases that we

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2 change in the delivery schedule for?

3 A. Not -- only particular aircraft in
4 relation to periods of time. So we did not
5 pick and choose aircraft within a period of
6 time. We just chose the aircraft that were in
7 a period of time.

8 Q. Let's go back to the first page of
9 this Exhibit 11.

10 So as we spoke about in the first
11 paragraph of this e-mail, you reference the
12 indefinite delay in delivering aircraft MSN
13 9549.

14 And just to confirm, that delay was
15 not the result of any request for a change in
16 schedule by AMCK, correct?

17 MR. HOSENPUD: Object to the form of
18 the question, assumes facts not in
19 evidence, misstates the document.

20 You can answer.

21 A. Based off of the notice, the delay
22 was because of a manufacturing issue.

23 Q. In the second paragraph, you say,
24 "We received verbal notice this afternoon that
25 our financier is uncomfortable funding aircraft

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2 deliveries in 2Q 2020, so we anticipate that
3 Airbus will work with us to manage the timing
4 of upcoming aircraft deliveries."

5 Do you see that?

6 A. I do.

7 Q. Is the financier you're referring to
8 AMCK?

9 A. Yes, I believe so.

10 Q. Did you get a response to this
11 e-mail?

12 A. I don't -- I don't recall if I did.

13 Q. Did anyone at Airbus threaten you
14 with a default under the Purchase Agreement?

15 A. During this time, when we were in
16 discussions with Airbus about deliveries of
17 aircraft and about making PDP payments, we were
18 told by Airbus numerous times that if we did
19 not fulfill our obligations that we risk being
20 put into default.

21 Q. Who at Airbus said that?

22 A. Matt Saks to me. I'm aware of other
23 correspondence with others that I can't point
24 to but are generally aware of.

25 Q. When Matt Saks told you, was that

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2 over the phone?

3 A. That was.

4 Q. You referred to correspondence with
5 others.

6 Do you know if that correspondence
7 was written correspondence?

8 A. I don't know if it was written or
9 verbal. I don't know if it was written or
10 verbal.

11 But we were made very aware by
12 Airbus that if we didn't fulfill our
13 obligations that there was a risk of default
14 and that they were taking that very seriously.

15 Q. In the first paragraph there, you
16 refer to "deferring the scheduled April PDP
17 payment" in the middle of that paragraph.

18 Do you see that?

19 A. I do.

20 Q. Was that part of the discussions
21 regarding a change in delivery schedule?

22 A. No, that was in relation to this
23 aircraft being -- delivery being delayed and
24 the cash inflow that we would have received
25 from this aircraft not happening because of the

C E R T I F I C A T E

STATE OF NEW YORK)

: ss

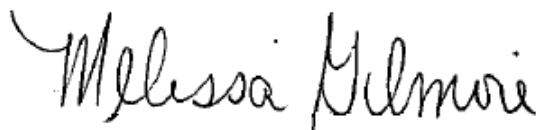
COUNTY OF RICHMOND)

I, MELISSA GILMORE, a Notary Public
within and for the State of New York, do hereby
certify:

That SPENCER THWAYTES, the witness
whose deposition is hereinbefore set forth, was
duly placed under oath by me and that such
deposition is a true record of the testimony
given by such witness.

I further certify that I am not
related to any of the parties to this action by
blood or marriage; and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 12th day of April, 2022.



MELISSA GILMORE